

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

ROBERT J. PARKER,)	
)	Case No. _____
Plaintiff,)	
)	
vs.)	COMPLAINT AND REQUEST
)	FOR JURY TRIAL
CRETE CARRIER CORPORATION,)	
)	
Defendant.)	

COMES NOW the Plaintiff, Robert J. Parker, and for his causes of action against Defendant, Crete Carrier Corporation, alleges and states as follows:

1. This is an action for injunctive and monetary relief against the Defendant for acts in violation of Plaintiff's rights as guaranteed under (ADA), 42 U.S.C. 12112 et seq.; and Attorney's Fees pursuant to 42 U.S. C. 2000e-5(k).

JURISDICTION AND VENUE

2. The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §1343 to hear and redress the deprivation of rights guaranteed under federal law.

3. Venue is appropriate in this Court pursuant to 28 I.S.C. §1391, as all



material facts occurred in the State of Nebraska, and the Defendant is a domestic corporation with a principal place of business in Lincoln, Lancaster County, Nebraska.

4. Plaintiff has met the administrative requirements of this action in that he filed a charge of discrimination with the Nebraska Equal Opportunity Commission (“NEOC”) and the Equal Employment Commission (“EEOC”) and received a Right to Sue Notice dated June 12, 2014.

PARTIES

5. Plaintiff, Robert J. Parker is a resident and citizen of Lincoln, Lancaster County, Nebraska.

6. Defendant, the Crete Carrier Corporation is a Domestic Corporation duly formed and subsisting under the laws of the State of Nebraska.

FACTS

7. On or about July 2, 2006, Defendant hired Plaintiff. A majority of Plaintiff’s work history with Defendant has been performed in the position of truck driver/trainer based out of North Platte, Nebraska.

8. In July, 2013, Defendant perceived Plaintiff as disabled and requested

the Plaintiff to take a medical test.

9. Plaintiff objected to taking the medical test which he reasonably believed to be unlawful based on Nebraska and Federal laws prohibiting disability discrimination.

10. Plaintiff does not have a disability or a substantially limiting impairment.

11. Plaintiff's performance has always been satisfactory.

12. Plaintiff has not ever fallen asleep while driving or working and has no issues with sleep.

13. Plaintiff has never been diagnosed with any symptoms of sleep apnea or any symptoms or any sleep related symptoms.

14. Defendant was requiring Plaintiff and all employees whom they considered to be "overweight" to submit to a sleep study as a condition of continuing employment.

15. On or about July 2, 2013, Russ Gerlach, terminal manager called Plaintiff and asked him if he used a CPAP machine.

16. Gerlach said he was scheduling Plaintiff for a sleep apnea test the

following Monday “because of his size.”

17. Plaintiff had a DOT physical and had been cleared to work as a truck driver by Defendant’s DOT physician.

18. Defendants were requiring persons of large body stature to take the test whereas small persons irrespective of their health conditions were not required to take the test.

19. Plaintiff obtained a letter from his personal physician to state that he did not have sleep apnea nor any sleep issues nor any impairment which he provided to Defendant.

20. Defendant’s safety director, Ray Coulter, called Plaintiff and told him if he would not take the test he would be out of service and assigned no hours.

21. Plaintiff was not allowed to work after July 15, 2013.

FIRST CAUSE OF ACTION
ADA

22. Plaintiff incorporates all allegations in paragraphs one through 21 as though fully set out herein verbatim.

23. The foregoing actions of Defendant constitute a violation of the ADA, as amended, Plaintiff has been discriminated against under 42 U.S.C. 12112 et. Seq.

24. Plaintiff was perceived by Defendant as having an impairment which substantially limits one or more major life activities. This perception caused Defendant to not assign hours and discharge Plaintiff.

25. Defendant's required the Plaintiff to submit to a medical examination and/or made inquiry of the Plaintiff whether the Plaintiff used a CPAP machine contrary to 42 U.S. C. 12112 (d)(f).

26. When Plaintiff object to the conduct which he reasonable believed to be in violation of discrimination laws, Plaintiff was terminated.

27. As a result of Defendant's unlawful discrimination and retaliation Plaintiff has suffered and continues to suffer lost wages, undue hardship, great emotional distress, humiliation, embarrassment, inconvenience, loss of enjoyment of life, damage to his reputation, personal and professional, which entitles him to compensatory and punitive damages.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully this court to assume jurisdiction over this case and:

- a) Award damages to compensate Plaintiff for his lost wages, lost benefits, pain and suffering, emotional distress, humiliation, and damage to his reputation, personal and professional;
- b) Assess punitive damages against the Defendant to the maximum extent allowed by law;
- c) Order Defendant to reinstate Plaintiff to a like position, as though no discrimination occurred, with full back-pay and all related employment benefits that Plaintiff would have had, had he not been discriminated against; or in lieu of reinstatement, award Plaintiff reasonable future wages;
- d) Award Plaintiff reasonable attorney fees and costs of this trial; and
- e) Award Plaintiff such further relief as the court deems just and proper.

REQUEST FOR JURY TRIAL

Plaintiff hereby requests that a jury trial be held in Lincoln, Nebraska.

Dated this 10th day of September, 2014.

ROBERT J. PARKER, Plaintiff,

By/s/ Joy Shiffermiller

Joy Shiffermiller, #18164
Shiffermiller Law Office, P.C., L.L.O.
1002 G Street
Lincoln, Nebraska 68508
402-484-7700
402-484-7714 (fax)

PRAECIPE FOR SUMMONS

TO THE CLERK OF SAID COURT:

Please issue a summons to Defendant:

Crete Carrier Corporation
Registered Agent, Timothy G. Aschoff
400 N W 56th Street
Lincoln, Nebraska 68528

And return the same with a copy of the Complaint, to attorney for the Plaintiff, Joy Shiffermiller, at 1002 G Street, Lincoln, Nebraska 68510, so that said summons may be on Defendant by certified mail.

/s/ Joy Shiffermiller

Joy Shiffermiller

Image ID:
D00437122D02

SUMMONS

Doc. No. 437122

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA
575 S. 10th Street - 3rd Floor
SEPARATE JUVENILE COURT-4th Floor
Lincoln NE 68508

Robert J Parker v. Crete Carrier Corporation

Case ID: CI 14 3149

TO: Crete Carrier Corporation

FILED BY

Clerk of the Lancaster District Court
09/10/2014

You have been sued by the following plaintiff(s):

Robert J Parker

Plaintiff's Attorney: Joy Shiffermiller
Address: 1002 G Street
Lincoln, NE 68508

Telephone: (402) 484-7700

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: SEPTEMBER 10, 2014 BY THE COURT:

Trey Z. Link
Clerk



PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

Crete Carrier Corporation
Reg Agent, Tim G. Aschoff
400 N W 56th Street
Lincoln, NE 68528

Method of service: Certified Mail

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.